

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FILED
JAMES BONINI
CLERK

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M&S ADVISORY GROUP, INC.,

Plaintiff,

v.

EYEMART EXPRESS, LTD.,

Defendant.

Case No. C-1-02-522

Judge Spiegel
Magistrate Judge Hogan

**DEFENDANT EYEMART
EXPRESS LTD.'S MOTION TO
MOVE THE TRIAL - NOW
SCHEDULED TO BEGIN ON
SEPTEMBER 7, 2004 - BY SIXTY
DAYS OR LESS**

Defendant EyeMart Express, Ltd., through its lead trial counsel, Michael Hawkins, hereby moves this Honorable Court for a sixty-day (or less) extension of the September 7th trial date due to public service and other commitments that have developed for Mr. Hawkins relative to, *inter alia*, the national convention of the National Conference for Community and Justice ("NCCJ"), which will be held in Cincinnati the same week in September as the scheduled trial date of this matter. Mr. Hawkins asks that the three-day trial be moved no more than sixty days, and he remains free to try this matter, at the Court's convenience, during the week of November 1st, 15th, 22nd, or 29, 2004. A memorandum in support of this motion follows.

Respectfully submitted,



Michael W. Hawkins (0012707)
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Trial Attorney for Defendant
EyeMart Express, Ltd.

MEMORANDUM OF LAW

Trial in this matter, before Judge Spiegel, is scheduled to begin on Tuesday, September 7, 2004 (the day after Labor Day). Trial is expected to last three days, from Tuesday, September 7th through Friday, September 10th. Given that I am Defendant's lead trial counsel, and quite familiar with the facts of this case, it is imperative that I appear at the trial, and not have this case tried by another partner or associate in my firm.

Since the scheduling of the trial date, I have had not one, but three commitments arise during the same week as the trial. Two of the three commitments are public service in nature; the last is a family commitment to my daughter, Meagan.

First, the NCCJ national convention will be held in Cincinnati from Wednesday, September 8th through Saturday, September 11th. The NCCJ's Cincinnati chapter will be hosting the convention. As a former Chair of the Cincinnati chapter, and as an active member of the Cincinnati chapter Board of Trustees, I will be directly involved with host activities during the convention and participate in other related activities during the day.

In addition to my NCCJ public service work, I serve as a Board member for the American Law Firm Association International ("ALFA"), which will be meeting in Chicago on Friday, September 10th. I have recently been asked to speak at the September 10th meeting. I expect to leave the NCCJ convention on Thursday, September 9th, and fly to Chicago to make the speech on Friday the 10th and return to Cincinnati for the NCCJ Awards on the 11th.

Finally, my daughter, Meagan - who will graduate from college this spring - has been awarded an internship with the International Federation of the Red Cross/Red Crescent Societies in Geneva, Switzerland. We have recently learned that Meagan's internship is scheduled to begin in Geneva on Tuesday, September 7th. I am Vice-Chair of International Services for the American Red Cross, and know some of the International Red Cross/Red Crescent officials with whom Meagan will be working. My wife, Diane, and I would like to plan on accompanying

Meagan to Geneva to ensure that her housing accommodations are satisfactory, to make some introductions for her and that the beginning of her internship is successful. I would like to plan to be in Switzerland the first week of September, and to fly back to Cincinnati on Monday, September 6th (Labor Day), and then to participate in activities related to the NCCJ convention beginning on September 8th.

Although I am committed throughout October 2004, I am available for trial the weeks of November 1st, November 15th, November 22nd, and November 29th. I will agree to try this case on whichever week is most convenient for Judge Spiegel, opposing counsel, and the Court. As noted above, trial is expected to last three days. I am grateful to the Court for its effort to accommodate my public service and family commitments, all of which have recently arisen, and to reschedule this trial in November.

WHEREFORE, I respectfully request that the trial of this matter be moved from September 7, 2004 to a date in November 2004 of the Court's selection, and preferably during the week of November 1st, November 15th, November 22nd or November 29th.

Respectfully submitted,




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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was filed electronically with the United States District Court for the Southern District of Ohio this 15th day of April 2004. Service upon Plaintiff shall be via the Court's electronic mail system.


Michael W. Hawkins (0012707)

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